

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

OWEN W. BARNABY,
Plaintiff

)
)

Vs.

) Hon. Robert J. Jonker
) Hon. Mag. Sally J. Berens

MICHIGAN STATE GOVERNMENT, ET, AL
Defendants

) Case No. 1:22 -CV- 1146

Owen W. Barnaby
P.O. Box 1926
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Addresses of Defendants
Berrien County Government
701 Main Street,
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(269) 983-7111

Attorney, T. Seth Koches, for,
Niles-Charter-Township/Board of Trustee
470 W. Centre Ave., Ste. A, Portage, MI. 49024
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Jeffery R. Holmstrom (P29405)
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830 Pleasant Street, Suite 100
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City of Benton Harbor
200 East Wall Street
Benton Harbor, MI 49022
(269) 927-8457

State Bar of Michigan
306 Townsend Street
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(517) 346-6305

Hon. Dana Nessel & Hon. Bryan W. Beach
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MOTION FOR DEFAULT JUDGMENT
FOR FAILURE TO FILE AN ANSWER TO
COMPLAINT OR A MOTION UNDER RULE 12

Come now, Plaintiff, In Pro Se, with his, 'Motion for Default Judgment for Defendant - City of Benton, failure to file an Answer to Plaintiff's Complaint or a Motion Under Rule 12.

Plaintiff, In Pro Se, Owen W. Barnaby, requested Default Judgment on January 3, 2023, for following Defendants :

1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James McGovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski, in his Individual capacity; 12), Defendant – State Bar of Michigan, 13), Defendant – Attorney Jefferey R. Holmstrom and 14), Defendant – Holmdtrom Law Office; 15), Defendant - Niles Charter Township Board of Trustees; and, 16), Defendant - for Defendant - Niles Charter Township, for the same Defendants' failure to file an answer to Plaintiff's Complaint or a Motion Under Rule 12.

Now, on January 4, 2023, Plaintiff move for Motion for Default Judgment for Defendant - City of Benton, for failure to file an answer to Plaintiff's Complaint or a Motion Under Rule 12. The request is based on the Brief in Support filed with the request and the facts, legal authorities and arguments contained in the Brief in Support of this Default Judgment.

Respectfully Submitted,

Dated: January 4, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 4th day of January 2023, a duplicate original of Plaintiff's, "Motion for Default judgment", filed with the Clerk of the using the ECF System, which will provide electric notice to the parties of record, and I have mailed by U.S. Postal Service the same to the non-ECP participants.

Respectfully Submitted,

Dated: January 4, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

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OWEN W. BARNABY,
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SUPPORTING BRIEF OF MOTION FOR DEFAULT JUDGMENT

**FOR FAILURE TO FILE AN ANSWER TO
COMPLAINT OR A MOTION UNDER RULE 12**

STATEMENT OF FACTS

First, Defendant - City of Benton, like all the other Defendants listed in Plaintiff's January 3, 2023, Motion for Default Judgment was properly served but failed to file an answer to Plaintiff's Complaint or a motion under Rule 12. Defendant - City of Benton was properly served, Second Amended Complaint on December 14, 2022. But failed to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before January 3, 2023. As such Plaintiff move Clerk of Court and or Court to enter Default Judgment against Defendant - City of Benton for its failure to file an answer to Plaintiff's Complaint or a motion under Rule 12, on or before January 3, 2023.

Lastly, all Defendants were properly served in the same manner, by US Postal certified mail, with restricted Delivery and with return receipt, inclusive of: Defendant – Kendell S. Asbenson, Assistant Attorney General of state of Michigan and Defendant – Dana Nessel Attorney General of State of Michigan, Defendants, the Hon. Jennifer Granholm former Governor, the Hon. Rick Snyder former Governor, and the Hon. Gretchen the current Governor of the State of Michigan and Michigan Supreme Court whom all file motion under Rule 12. However, all the Defendants listed in Plaintiff's Motions for Default Judgment failed to file an answer to Plaintiff's Complaint or a motion under Rule 12.

ARGUMENT

The United States District Court for the Eastern District of Michigan, that issued the Summons clearly states, that:

A lawsuit has been filed against you.

“Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney...”

“If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.”

Furthermore, this United States District Court for the Western District of Michigan, that issues Summons in Civil Actions states, that:

AO 440 (Rev. 01/09) Summons in a Civil Action - MIWD (Rev. 07/15)

“YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within ___, days after service of this sum mons on you (not counting the day you received it). If you fail to respond, **judgment by default will be entered against you** for the relief demanded in the complaint. You must also file your answer or motion with the Court.”

Moreover, Fed. R. Civ. P. 12 (b)(1)(A) and Fed. R. Civ. P. 55 states in respect to Judgment as follows:

Rule 55 – Default; Default Judgment

(a) **Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.

(b) Entering a Default Judgment.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

Rule 55 – Default; Default Judgment

12.1 In these Rules, 'default judgment' means judgment without trial where a defendant—

- (a) has failed to file an acknowledgment of service; or
- (b) has failed to file a defense or any document intended to be a defense.

Plaintiff contends, that, in truth and in fact, each time, Plaintiff sought Courts for redressed, Defendants retaliated and intentionally misled Plaintiff, with intentionally false misrepresentation and omission of the material facts, they were obligated to disclose and with reckless disregards for the truth and concealment, and deterred Plaintiff from timely discovery in order to Amend-then-Complaint, that, they stole and defrauded Plaintiff of his real properties and is causing him, 'Intentional infliction of emotional distress', with 'Forged Quit Claim Deed', 'Forged, Notice of Judgment of Foreclosure', and 'Forged Certificates of Forfeiture, Unauthorized Practice Law, on intentional false pretense of unpaid properties taxes and deterred this Complaint issues of claim from redress and prevented Plaintiff from getting monetary relief he warrants.

Moreover, all Defendants were properly served in the same manner, by US Postal certified mail, with restricted Delivery and with return receipt, inclusive of: Defendant – Kendell S. Asbenson, Assistant Attorney General of state of Michigan and Defendant – Dana Nessel Attorney General of State of Michigan, Defendants, the Hon. Jennifer Granholm former Governor, the Hon. Rick Snyder former Governor, and the Hon. Gretchen the current Governor of the State of Michigan and Michigan Supreme Court whom all filing motion under Rule 12. In the same manner: 1), Defendant - Lori D. Jarvis Registrar; 2), Defendant - Lora L. Freehling Registrar; 3), Defendant - Kathleen Culberson, Notary Public; 4), Defendant – Bret Witskowski, Treasurer; 5), Defendant – Shelly Weich, Treasurer; 6), Defendant – Board of Commissioner; 7), Defendant – Attorney Mckinley R. Elliott; 8), Defendant – Attorney Donna B. Howard; 9), Defendant – Attorney James MCGovern; 10), Defendant – Berrien County Government; 11), Defendant – Bret Witskowski, in his Individual capacity; 12), Defendant – State Bar of Michigan, 13), Defendant – Attorney Jefferey R. Holmstrom and 14), Defendant – Holmdtrom

Law Office; 15), Defendant - Niles Charter Township Board of Trustees; and, 16), Defendant - Niles Charter Township, 17) Defendant - City of Benton, should have responded with filed an answer to Plaintiff's Complaint or a Motion Under Rule 12, within the 21 days. As such this Motion for Default Judgment is to add Defendant - City of Benton with other listed Defendants for their failed to file an answer to Plaintiff's Complaint or a motion under Rule 12.

Relief Requesting

For the reasons articulated in Supporting Brief to Motion for Default Judgment for Defendants' Failure to File an Answer to Plaintiff's Complaint or a Motion Under Rule 12, Plaintiff is asking this Your Honorable Clerk of Court or the Court to grant Plaintiff's, 'Motion for Default judgment against Defendant - City of Benton with the other Defendants mentioned with full damages set forth in his affidavit.

Respectfully Submitted,

Dated: January 4, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 4th day of January 2023, a duplicate original of Plaintiff's, "Motion's Brief for Default judgment", was filed with the Clerk of the Court, using the ECF System, which will provide electric notice to the parties of record, and I have mailed by U.S. Postal Service the same to relevant non-ECP participants.

Respectfully Submitted,

Dated: January 4, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.